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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

Nos. 334 and 403.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REHEARING AND RECONSIDERATION OF ORDER DENYING THE PETITIONS FOR WRIT OF CERTIORARI.

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, respectfully shows to this Honorable Court, as follows:

Petitioner earnestly submits that the two issues involved in these cases as resolved by the courts below are of such magnitude and importance that they will dramatically change the entire labor law of the United States and so extend the jurisdiction of the Labor Board as to control all activities of labor unions in their social, political, scientific and other collateral efforts, apart from those relating to terms and conditions of employment between the unions and *primary* employers.

The National Labor Relations Act, prior to the decisions in the instant cases, restricted the jurisdiction of the Labor Board to cases involving *"labor disputes"*. The NLRA, Section 2(9), defines a labor dispute: "The term labor dispute includes any controversy concerning *terms, tenure* or *conditions of employment,* or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee." (Emphasis supplied.)

Chief Judge Sobeloff, speaking for the Fourth Circuit Court of Appeals in the *"Tulse Hill"* case (*NLRB* v. *International Longshoremen's Association*), 332 F. 2d 992 (1964), said: "The Act has been interpreted as conferring Board jurisdiction over a variety of labor matters, but there can be no jurisdiction where the complaint presents a controversy unrelated to the resolution of a 'labor dispute' as defined. We think that is the case here." In that case, the International Longshoremen's Association had withheld labor from a vessel which had been trading with Cuba. The opinion of Judge Sobeloff makes it crystal clear that the Labor Board is without authority to control the activities of unions and of union members in exercising their political beliefs, such as protesting communist activities, unless a labor dispute as defined in the Act is involved.

In the instant case, a supervisors' union (MEBA), which is exempt from the NLRA, picketed and immobilized the S/S *"Maximus"*. The NMU, which was not involved in the dispute but which represented the unlicensed seamen on the *"Maximus"*, was directly affected because it was in danger of losing all its jobs on the vessel as a result of the supervisors' picketing. In order to break the stranglehold of the exempt supervisor's union and protect

the jobs of its members on the *"Maximus"*, NMU began to picket the supervisors on other vessels where they could be found. Clearly, there is no labor dispute involved here, and, under the *"Tulse Hill"* decision the Labor Board was utterly without authority to exercise jurisdiction. In affirming the Board, the District of Columbia and the Second Circuit Court of Appeals expressly refused to follow the Fourth Circuit's decision of Judge Sobeloff in the *"Tulse Hill"* case. Upon this ground alone, this Court should grant certiorari. To leave the decisions below intact is to give the Labor Board a blank check to exercise jurisdiction over unions, far beyond anything that Congress intended. If the Board could exercise jurisdiction to make the longshoremen load a Communist vessel, then the Board can also penalize a union for refusing to do business with the Ku Klux Klan or with the Daughters of the American Revolution. In other words, so long as employees band together and become known as a labor union, then everything that they do is subject to the jurisdiction and review of the Labor Board. Nothing could be more contrary to the express language of the Labor Act and the intention of the Congress. Yet, unless this Court grants certiorari, the Labor Board will already have embarked on that program in the instant cases. Apart from the constitutional rights which are submerged in this tidal wave, the Labor Board now assumes the role of a potentate with the right of review and control over all phases of union activity.

The second point at issue in these cases is that the secondary boycott provisions of the NLRA apply only where there is a primary employer involved.

The Courts below and the Labor Board ruled that no primary employer was necessary to a secondary boycott charge. The late revered Judge Learned Hand, in *Douds v. International Longshoremen's Association*, 224 F. 2d

455, speaking for the Second Circuit, squarely held that a primary employer is an indispensible element to a secondary boycott charge. This holding is fully supported by the legislative history which is set out in our petitions for certiorari.

Moreover, the lower courts' holding on this point runs counter to the constitutional free speech rights as clearly stated by this Court in *NLRB* v. *Fruit and Vegetable Packers*, 337 U. S. 58.

We are fully conscious of the great burdens incident to the granting of petitions for certiorari, and, particularly, to the even greater burden in the granting of petitions for rehearing after certiorari has been denied, as here. However, petitions for rehearing were designed by this Court to afford an opportunity for reconsideration in those cases where a petitioner may not have brought the issues into proper focus, or where petitioner may not have adequately analyzed the issues. We respectfully suggest that these cases fall into those categories.

The principles here involved affect not only the 50,000 member NMU, petitioner herein, but necessarily extend to and will profoundy affect every union in the country and their millions of members.

The decisions below are in direct conflict with the well-reasoned decisions of two of the greatest and most respected judges in the Federal system, Judge Simon Sobeloff in the *"Tulse Hill"* case, and Judge Learned Hand in *Douds* v. *ILA*.

The granting of certiorari in these cases is of the greatest urgency, if labor's rights are not to be washed down the drain.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to the favorable consideration of this Court, and is not filed for the purpose of delay.

Abraham E. Kubie

Counsel for Petitioner.

END